

DECISION DOCUMENT  
PREAUTHORIZATION OF A CERCLA SECTION 111(a) CLAIM

THE PICILLO FARM SUPERFUND SITE  
COVENTRY, RHODE ISLAND

I. **STATEMENT OF AUTHORITY**

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9611, authorizes the reimbursement of response costs incurred in carrying out the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"). Section 112 of CERCLA, 42 U.S.C. § 9612, directs the President to establish the forms and procedures for filing claims against the Hazardous Substance Superfund ("Superfund" or the "Fund"). Executive Order 12580 (52 Fed Reg. 2923, January 29, 1987) delegates to the Administrator of the Environmental Protection Agency ("EPA") the responsibility for CERCLA claims and for establishing forms and procedures for such claims. The forms and procedures can be found in the Response Claims Procedures for the Hazardous Substance Superfund, 40 C.F.R. Part 307, 58 Fed. Reg. 5460 (January 21, 1993). Executive Order 12580 also delegates to the EPA Administrator the authority to reach settlements pursuant to Section 122(b) of CERCLA, 42 U.S.C. § 9622(b). The Director of the Office of Emergency and Remedial Response ("OERR") is delegated authority to evaluate and make determinations regarding claims (EPA Delegation 14-9, September 13, 1987 and EPA Redefinition 14-9 "Claims Asserted Against the Fund," May 25, 1988). EPA Delegation 14-9, July 24, 2002, redelegates the authority to preauthorize claims against the Hazardous Substance Superfund for necessary response costs, and to approve reimbursement for claimed response costs, to the Regional Administrators, and the authority to serve as the Review Officer to the Assistant Administrator for Solid Waste and Emergency Response.

II. **BACKGROUND ON THE SITE**

The Picillo Farm Superfund Site in Coventry, Rhode Island (the "Site") was placed on the National Priorities List in 1983. Located on a former pig farm, the Site was contaminated by at least 10,000 drums of hazardous substances plus an undetermined volume of liquid chemical waste. These materials were disposed of during a limited period in 1977 into several trenches on a 7.5 acre area. The Site includes the 7.5-acre disposal area, which is currently fenced, and approximately 35 acres of surrounding woodland and wetland areas, defined by the extent of the ground water and surface water contamination.

On September 27, 1993, Paul G. Keough, Acting Regional Administrator, signed the Record of Decision ("ROD") for the Site. The selected remedy in the ROD addresses the source control and management of migration components of the remedy. The major components of the source control remedy include: in-situ enhanced vacuum extraction of contaminated soil to remove



volatile organic compounds and semi-volatile organic compounds; excavation and off-site disposal of surface soil contaminated with polychlorinated biphenyls; access restrictions to the source area, and a soil monitoring program to demonstrate compliance with soil cleanup levels and a performance monitoring program to evaluate the effectiveness of the enhanced soil vapor extraction system. The major components of the management of migration remedy include: extraction and treatment of contaminated ground water from the overburden and shallow bedrock aquifers, an environmental monitoring program to evaluate the extent of contamination over time; and institutional controls to prevent the use of contaminated ground water and surface water.

In 1995, EPA entered into a Remedial Design and Remedial Action ("RD/RA") Consent Decree with a number of potentially responsible parties ("PRPs") at the Site. Five of the PRPs, American Cyanamid Company, Ashland Chemical Company, GAF Corporation (whose obligations under the RD/RA Consent Decree are being performed by ISP Environmental Services, Inc.), General Electric Company and Monsanto Company, agreed to perform the RD/RA, as set forth in the ROD, the Consent Decree and the SOW. These five parties are defined in the Consent Decree as the Performing Settling Defendants (hereinafter, with ISP Environmental Services, Inc. for GAF Corporation and Solutia Inc. for Monsanto Company (now Pharmacia Corporation), to be called "Respondents").

In 1999, hazardous material consisting of elongated lumps of white to slightly gray, solid, firm textured material (the "epoxy waste" material) and commingled soil (formerly referred to as "grossly contaminated soil") was uncovered by the Respondents' contractor. The commingled soil was identified as soil not separated from the epoxy waste. The contractor removed approximately 250 cu. yds. of this material in order to install piping necessary for both the soil vapor extraction ("SVE") system and the groundwater pump and treat. It was disposed of at a hazardous waste incinerator after the epoxy waste failed a TCLP test. An area containing approximately 2,000 - 4,000 cu. yds. of this material was delineated by EPA and the Respondents and remains on-site, at depths from three to nine feet below ground surface. A temporary asphalt cap was placed over the SVE source area (including the epoxy waste material) to inhibit water infiltration and aid in the dewatering efforts. This material was not moved, but was left in place and capped. The temporary cap is not equivalent to hazardous waste landfill closure; no hazardous waste landfill is contemplated for the Site.

The epoxy waste contains a number of compounds, including toluene and styrene in the parts per thousand range and methylene chloride, chloroform, 1,1,1-trichloroethane, trichloroethene, tetrachloroethene, and 1,2-dichlorobenzene in the parts per million range. The epoxy waste is wrapped in plastic and shows little sign of degradation. The gas permeability (air flow) of this waste material is virtually negligible, thus soil venting would have little effect on removal of volatile compounds from this material. It represents a long-term source of VOC release to groundwater and the atmosphere via slow diffusion and requires removal. It also represents a direct contact risk under future exposure scenarios.



On September 25, 2002, EPA signed an Action Memorandum regarding removal of this waste. The Action Memorandum requires the delineation, excavation, sampling and off-site disposal of the epoxy material and commingled soil (formerly referred to as "grossly contaminated soil"). The purpose of this work is to remove epoxy waste that is not amenable to treatment by SVE. The commingled soil will also be disposed of off-site. The vertical and horizontal extent of epoxy waste and commingled soil will be established and the material will be excavated and disposed of in a proper disposal facility. Confirmatory physical testing at the limits of excavation will be performed as needed to document that objectives of excavation activities have been met, the Picillo Waste has been removed, and no contaminated soil zones associated with this waste material remain outside SVE system influence. Several components of the extraction system will need to be removed and replaced to accommodate excavation of the epoxy waste. Upon completion of this removal action, SVE will continue operations in the contaminated zones.

On September 25, 2002, the Respondents submitted a formal application for preauthorization as required by Section 300.700(d) of the NCP and 40 C.F.R. § 307.22. An Administrative Order by Consent ("AOC") between EPA and the Respondents is being executed in conjunction with this Decision Document ("Preauthorization Decision Document" or "PDD").

### III. FINDINGS

Preauthorization (i.e., EPA's prior approval to submit a claim against the Superfund for reasonable and necessary response costs incurred as a result of carrying out the NCP) represents the Agency's commitment to reimburse a claimant from the Superfund, subject to any maximum amount of money set forth in this PDD, if the response action is conducted in accordance with the preauthorization and costs are reasonable and necessary. Preauthorization is a discretionary action by the Agency taken on the basis of certain determinations.

EPA has determined, based on its evaluation of relevant documents and the Respondents' Application for Preauthorization ("Application") pursuant to 40 C.F.R. § 300.700(d) that:

- (A) A release or potential release of hazardous substances warranting a response under Section 300.435 of the NCP exists at the Site;
- (B) The Respondents have agreed to implement the cost-effective remedy selected by the EPA to address the threat posed by the release at the Site;
- (C) The Respondents have demonstrated engineering expertise and a knowledge of the NCP and attendant guidance;
- (D) The activities proposed by the Respondents, when supplemented by the terms and conditions contained herein, are consistent with the NCP; and
- (E) The Respondents have obtained the consent of the State of Rhode Island.



EPA has determined, consistent with 40 C.F.R. § 307.23, that the Application submitted by the Respondents demonstrates a knowledge of relevant NCP provisions, 40 C.F.R. Part 307, and EPA guidance sufficient for the conduct of a Removal Action at the Site.

The Respondents are generally obligated to comply with all provisions and representations in the Application for Preauthorization, and to notify EPA of any changed circumstances which alter those provisions. If circumstances change between the time the Application is submitted, and the time of remedy implementation, it is in EPA's discretion to determine which Application provisions are still valid and which provisions no longer apply. The AOC, including the terms and conditions of the PDD, shall govern the conduct of response activities at the Site. In the event of any ambiguity or inconsistency between the Application for Preauthorization and this PDD, with regard to claims against the Fund, the PDD and the AOC shall govern.

#### IV. PREAUTHORIZATION DECISION

I preauthorize the Respondents to submit a claim(s) against the Superfund for an amount not to exceed the lesser of \$1,400,000 or 40% of reasonable and necessary eligible costs for the Removal Action incurred pursuant to the Action Memorandum and the AOC for the Site. This preauthorization is subject to compliance with the AOC and the provisions of this PDD.

#### V. AUDIT PROCEDURES

The Respondents shall develop and implement audit procedures which will ensure their ability to obtain and implement all agreements to perform preauthorized response actions, in accordance with sound business judgment and good administrative practice as required by 40 C.F.R. § 307.32(e). Those requirements shall include but not necessarily be limited to the following procedures.

A. The Respondents will develop and implement procedures which provide adequate public notice of solicitations for offers or bids on contracts. Solicitations must include evaluation methods and criteria for contractor selection. The Respondents shall notify EPA of the qualifications of all contractors and principal subcontractors hired to perform preauthorized response actions. EPA shall have the right to disapprove the selection of any contractor or subcontractor selected by the Respondents. EPA shall provide written notice to the Respondents of any such disapproval. In order to facilitate expeditious and efficient completion of the Work, Environmental Science Services, Inc., the Supervising Contractor implementing the RD/RA Consent Decree work, has been selected in general accordance with the noncompetitive and optional methods for procurement of engineering services found in EPA's Guidance on Procurement Under Superfund Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988) to provide engineering and consulting services related to planning, overseeing, and documenting the Work.



B. As required by 40 C.F.R. § 307.21(e), the Respondents will develop and implement procedures for procurement transactions which provide maximum open and free competition; do not unduly restrict or eliminate competition; and provide for the award of contracts to the lowest, responsive, responsible bidder. The Respondents and their contractors shall use free and open competition for all supplies, services and construction with respect to the Work performed at the Site. There are a number of ways that the Respondents can meet these requirements including but not limited to the following:

1. For example, if the Respondents award a fixed price contract to a prime contractor, the Respondents have satisfied the requirement of open and free competition with regard to any subcontracts awarded within the scope of the prime contract.

2. The Respondents are not required to comply with the Federal procurement requirements found at 40 C.F.R. Part 33 or EPA's Guidance on Procurement Under Superfund Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988), in meeting these requirements. However, EPA does require that the Respondents use these documents for guidance in developing procurement procedures for small purchases, formal advertising, competitive negotiations and noncompetitive negotiations as each may be appropriate to remedying the release or threat of release at the Site.

3. With reference to small purchase procedures, EPA defines small purchase procedures as those relatively simple, informal procurement methods for securing services, supplies and other property from an adequate number of qualified sources in instances in which the services, supplies and other property being purchased constitute a discrete procurement transaction and do not cost more than a certain amount in the aggregate (Example: \$25,000). Respondents can meet the requirements of maximum free and open competition with respect to small purchases by developing procedures which follow 40 C.F.R. Part 33 or EPA's Guidance on Procurement Under Superfund Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988). However, Respondents shall in no event divide procurement transactions into smaller parts to avoid the dollar limitation.

C. The Respondents may use a list or lists of pre-qualified persons, firms, or products to acquire goods and services. The Respondents shall make each pre-qualification using evaluation methods and criteria which are consistent with the selection and evaluation criteria developed pursuant to Section V.A., above. Such list(s) must be current and include enough qualified sources to ensure maximum open and free competition. The Respondents shall not preclude potential offerors not on the pre-qualified list from qualifying during the solicitation period.

D. The Respondents shall develop and implement procedures to settle and satisfactorily resolve all contractual and administrative matters arising out of agreements to perform preauthorized response actions, in accordance with sound business judgment and good administrative practice as required by 40 C.F.R. § 307.32(e).



All of the following actions shall be conducted in a manner to assure that the preauthorized response actions are performed in accordance with all terms, conditions and specifications of contracts as required by EPA: (1) invitations for bids or requests for proposals; (2) contractor selection; (3) subcontractor approval; (4) change orders and contractor claims (procedures should minimize these actions); (5) resolution of protests, claims, and other procurement related disputes; (6) subcontract administration.

E. The Respondents shall develop and implement a change order management policy and procedure generally in accordance with EPA's Guidance on Procurement Under Superfund Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988).

F. The Respondents shall develop and implement a financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current, and complete accounting of all financial transactions for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations.

G. The Removal Work Plan shall require the Respondents to develop and submit to EPA a Project Delivery Strategy to address the management approach for implementing the Removal Action. This Plan shall include an identification of key project management personnel, complete with roles, responsibilities and lines of authority (financial and decisional), and an organizational chart.

H. Modification of elements or performance requirements contained in the AOC shall be consistent with Section XXVIII of the AOC and shall require approval by the EPA Regional Administrator or his/her designee. Such modifications, when approved by the Regional Administrator or his/her designee in accordance with Agency procedures, shall modify this PDD.

## VI. CLAIMS PROCEDURES

A. Pursuant to Section 111(a)(2) of CERCLA, EPA may reimburse necessary response costs incurred as a result of carrying out the NCP that satisfy the requirements of 40 C.F.R. § 307.21, subject to the following limitations:

1. Costs may be reimbursed only if incurred after the date of this preauthorization;
2. Costs incurred for long-term operation and maintenance are not eligible for reimbursement from the Superfund; and

B. In submitting claims to the Superfund, the Respondents shall:

- A. Document that response activities were preauthorized by EPA;

- B. Substantiate all claimed costs through an adequate financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current and complete accounting of all financial transactions for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations; and
- C. Document that all claimed costs were eligible for reimbursement, consistent with applicable requirements of 40 C.F.R. Part 307.

C. Claims may be submitted against the Fund by the Respondents only while the Respondents are in compliance with the terms of the AOC and no more frequently than upon:

- 1. Completion of removal of the Picillo Waste;
- 2. Completion of Work Report.

## **VII. OTHER CONSIDERATIONS**

A. This PDD is intended to benefit only the Respondents and EPA. It extends no benefit to nor creates any right in any third party.

B. If any material statement or representation made in the Application for Preauthorization is false, misleading, misrepresented, or misstated and EPA relied upon such statement in making its decision, the preauthorization by EPA may be withdrawn following written notice to the Respondents. Disputes arising out of EPA's determination to withdraw its preauthorization shall be governed by Section XVII ("Claims Against the Superfund") of the AOC. Criminal and other penalties may apply as specified in 40 C.F.R. § 307.15.

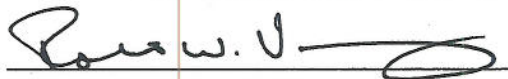
C. The Fund's obligation in the event of failure of the Removal Action shall be governed by 40 C.F.R. § 307.42. EPA may require the Respondents to submit any additional information needed to determine whether the actions taken were in conformance with the AOC and were reasonable and necessary.

D. This preauthorization shall be effective as of the date of signature.

E. If it is subsequently determined that the preauthorized response actions that comprise the Removal Action require modification, or if it appears that project costs for the Removal Action will exceed \$3,500,000, a revised application for preauthorization may be submitted to EPA for up to 40% of that portion of the necessary costs incurred by Respondents in completing the Removal Action in accordance with the AOC and this PDD which exceeds \$3,500,000. In accordance with the requirements of 40 C.F.R. § 307.22(i), a revised application



for preauthorization must be approved by EPA before different, or additional, actions are undertaken if such actions are to be eligible for compensation from the Fund.



ROBERT W. VARNEY  
Regional Administrator  
Region I

11-13-02

Date